

AMENDED IN SENATE APRIL 26, 2006

SENATE BILL

No. 1817

Introduced by Senator Torlakson

February 24, 2006

An act to ~~add Section 105.5 to the Water Code, relating to water~~ amend Sections 1103, 1103.4, and 1103.5 of, to amend the heading of Article 1.7 (commencing with Section 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of, and to add Section 1103.6 to, the Civil Code, relating to real property disclosures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1817, as amended, Torlakson. ~~Water conservation. Real property disclosures.~~

Existing law requires certain natural hazard disclosures to be made upon the transfer of residential property, as specified, and prescribes the manner and form of the disclosures.

This bill would require certain additional environmental hazard disclosures to be made upon the transfer of residential property, as specified, and would prescribe the manner and form of the disclosures. The bill would make other conforming changes.

~~Existing law declares that the protection of the public interest in the development of water resources is of vital concern to the people of the state and requires the state to determine in what way water should be developed for the greatest public benefit. Existing law declares that the right to use water does not extend to the waste, unreasonable use, or unreasonable method of use or diversion of water.~~

~~This bill would declare that it is the established water policy of the state to conserve water to the maximum extent feasible to ensure its continued availability and to protect natural resources.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The heading of Article 1.7 (commencing with*
2 *Section 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of*
3 *the Civil Code is amended to read:*

4
5 Article 1.7. Disclosure of Natural *and Environmental* Hazards
6 Upon Transfer of Residential Property
7

8 *SEC. 2. Section 1103 of the Civil Code is amended to read:*

9 1103. (a) Except as provided in Section 1103.1, this article
10 applies to the transfer by sale, exchange, installment land sale
11 contract, as defined in Section 2985, lease with an option to
12 purchase, any other option to purchase, or ground lease coupled
13 with improvements, of any real property described in subdivision
14 (c), or residential stock cooperative, improved with or consisting
15 of not less than one nor more than four dwelling units.

16 (b) Except as provided in Section 1103.1, this article shall
17 apply to a resale transaction entered into on or after January 1,
18 2000, for a manufactured home, as defined in Section 18007 of
19 the Health and Safety Code, that is classified as personal property
20 intended for use as a residence, or a mobilehome, as defined in
21 Section 18008 of the Health and Safety Code, that is classified as
22 personal property intended for use as a residence, if the real
23 property on which the manufactured home or mobilehome is
24 located is real property described in subdivision (c).

25 (c) This article shall apply to the transactions described in
26 subdivisions (a) and (b) only if the transferor or his or her agent
27 is required by one or more of the following to disclose the
28 property's location within a hazard zone:

29 (1) A person who is acting as an agent for a transferor of real
30 property that is located within a special flood hazard area (any
31 type Zone "A" or "V") designated by the Federal Emergency
32 Management Agency, or the transferor if he or she is acting
33 without an agent, shall disclose to any prospective transferee the
34 fact that the property is located within a special flood hazard area
35 if either:

1 (A) The transferor, or the transferor's agent, has actual
2 knowledge that the property is within a special flood hazard area.

3 (B) The local jurisdiction has compiled a list, by parcel, of
4 properties that are within the special flood hazard area and a
5 notice has been posted at the offices of the county recorder,
6 county assessor, and county planning agency that identifies the
7 location of the parcel list.

8 (2) A person who is acting as an agent for a transferor of real
9 property that is located within an area of potential flooding
10 designated pursuant to Section 8589.5 of the Government Code,
11 or the transferor if he or she is acting without an agent, shall
12 disclose to any prospective transferee the fact that the property is
13 located within an area of potential flooding if either:

14 (A) The transferor, or the transferor's agent, has actual
15 knowledge that the property is within an inundation area.

16 (B) The local jurisdiction has compiled a list, by parcel, of
17 properties that are within the inundation area and a notice has
18 been posted at the offices of the county recorder, county assessor,
19 and county planning agency that identifies the location of the
20 parcel list.

21 (3) A transferor of real property that is located within a very
22 high fire hazard severity zone, designated pursuant to Section
23 51178 of the Government Code, shall disclose to any prospective
24 transferee the fact that the property is located within a very high
25 fire hazard severity zone and is subject to the requirements of
26 Section 51182 of the Government Code if either:

27 (A) The transferor, or the transferor's agent, has actual
28 knowledge that the property is within a very high fire hazard
29 severity zone.

30 (B) A map that includes the property has been provided to the
31 local agency pursuant to Section 51178 of the Government Code
32 and a notice has been posted at the offices of the county recorder,
33 county assessor, and county planning agency that identifies the
34 location of the map and any information regarding changes to the
35 map received by the local agency.

36 (4) A person who is acting as an agent for a transferor of real
37 property that is located within an earthquake fault zone,
38 designated pursuant to Section 2622 of the Public Resources
39 Code, or the transferor if he or she is acting without an agent,
40 shall disclose to any prospective transferee the fact that the

1 property is located within a delineated earthquake fault zone if
2 either:

3 (A) The transferor, or the transferor's agent, has actual
4 knowledge that the property is within a delineated earthquake
5 fault zone.

6 (B) A map that includes the property has been provided to the
7 city or county pursuant to Section 2622 of the Public Resources
8 Code and a notice has been posted at the offices of the county
9 recorder, county assessor, and county planning agency that
10 identifies the location of the map and any information regarding
11 changes to the map received by the county.

12 (5) A person who is acting as an agent for a transferor of real
13 property that is located within a seismic hazard zone, designated
14 pursuant to Section 2696 of the Public Resources Code, or the
15 transferor if he or she is acting without an agent, shall disclose to
16 any prospective transferee the fact that the property is located
17 within a seismic hazard zone if either:

18 (A) The transferor, or the transferor's agent, has actual
19 knowledge that the property is within a seismic hazard zone.

20 (B) A map that includes the property has been provided to the
21 city or county pursuant to Section 2696 of the Public Resources
22 Code and a notice has been posted at the offices of the county
23 recorder, county assessor, and county planning agency that
24 identifies the location of the map and any information regarding
25 changes to the map received by the county.

26 (6) A transferor of real property that is located within a state
27 responsibility area determined by the board, pursuant to Section
28 4125 of the Public Resources Code, shall disclose to any
29 prospective transferee the fact that the property is located within
30 a wildland area that may contain substantial forest fire risks and
31 hazards and is subject to the requirements of Section 4291 if
32 either:

33 (A) The transferor, or the transferor's agent, has actual
34 knowledge that the property is within a wildland fire zone.

35 (B) A map that includes the property has been provided to the
36 city or county pursuant to Section 4125 of the Public Resources
37 Code and a notice has been posted at the offices of the county
38 recorder, county assessor, and county planning agency that
39 identifies the location of the map and any information regarding
40 changes to the map received by the county.

1 (7) A transferor of real property that is located within a
2 one-quarter mile radius of an environmental hazard site listed in
3 Section 1103.6, as determined pursuant to the process described
4 in subparagraph (A), or within the same ZIP Code or city as an
5 environmental hazard site listed in Section 1103.6, as determined
6 pursuant to the process described in subparagraph (B), shall
7 disclose this fact to any prospective transferee. A transferor is
8 not required to make both disclosures.

9 (A) A transferor of real property regulated by this paragraph,
10 or the transferor's agent, who uses a report or opinion of a third
11 party, as described in subdivision (c) of Section 1103.4, to
12 determine the location of environmental hazards in the vicinity of
13 the real property shall determine if the property is located within
14 a one-quarter mile radius of an environmental hazard site listed
15 in Section 1103.6.

16 (B) A transferor of real property regulated by this paragraph
17 who does not use a report or opinion of a third party, as
18 described in subdivision (c) of Section 1103.4, to determine the
19 location of environmental hazards in the vicinity of the real
20 property shall satisfy the disclosure requirements of this
21 paragraph by doing either of the following:

22 (i) Determining if the property is located within the same ZIP
23 Code or the same city as an environmental hazard site listed in
24 Section 1103.6 as indicated by a search of the public database
25 available at the Web site of the Department of Toxic Substance
26 Control. A transferor who transfers real property located in an
27 unincorporated area is not required to search by city.

28 (ii) Determining if the property is within a one-quarter mile
29 radius of an environmental hazard site listed in Section 1103.6.

30 (d) Any waiver of the requirements of this article is void as
31 against public policy.

32 SEC. 3. Section 1103.4 of the Civil Code is amended to read:

33 1103.4. (a) Neither the transferor nor any listing or selling
34 agent shall be liable for any error, inaccuracy, or omission of any
35 information delivered pursuant to this article if the error,
36 inaccuracy, or omission was not within the personal knowledge
37 of the transferor or the listing or selling agent, and was based on
38 information timely provided by public agencies or by other
39 persons providing information as specified in subdivision (c) that

1 is required to be disclosed pursuant to this article, and ordinary
2 care was exercised in obtaining and transmitting the information.

3 (b) The delivery of any information required to be disclosed
4 by this article to a prospective transferee by a public agency or
5 other person providing information required to be disclosed
6 pursuant to this article shall be deemed to comply with the
7 requirements of this article and shall relieve the transferor or any
8 listing or selling agent of any further duty under this article with
9 respect to that item of information.

10 (c) The delivery of a report or opinion prepared by a licensed
11 engineer, land surveyor, geologist, or expert in natural hazard
12 discovery dealing with matters within the scope of the
13 professional's license or expertise, shall be sufficient compliance
14 for application of the exemption provided by subdivision (a) if
15 the information is provided to the prospective transferee pursuant
16 to a request therefor, whether written or oral. In responding to
17 that request, an expert may indicate, in writing, an understanding
18 that the information provided will be used in fulfilling the
19 requirements of ~~Section~~ *Sections 1103.2 and 1103.6* and, if so,
20 shall indicate the required disclosures, or parts thereof, to which
21 the information being furnished is applicable. Where that
22 statement is furnished, the expert shall not be responsible for any
23 items of information, or parts thereof, other than those expressly
24 set forth in the statement.

25 (1) In responding to the request, the expert shall determine
26 whether the property is within an airport influence area as
27 defined in subdivision (b) of Section 11010 of the Business and
28 Professions Code. If the property is within an airport influence
29 area, the report shall contain the following statement:

30
31 NOTICE OF AIRPORT IN VICINITY
32

33 This property is presently located in the vicinity of an airport,
34 within what is known as an airport influence area. For that reason, the
35 property may be subject to some of the annoyances or inconveniences
36 associated with proximity to airport operations (for example: noise,
37 vibration, or odors). Individual sensitivities to those annoyances can vary
38 from person to person. You may wish to consider what airport
39 annoyances, if any, are associated with the property before you complete
40 your purchase and determine whether they are acceptable to you.

(2) In responding to the request, the expert shall determine whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as defined in Section 66620 of the Government Code. If the property is within the commission's jurisdiction, the report shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

SEC. 4. Section 1103.5 of the Civil Code is amended to read:

1103.5. (a) After a transferor and his or her agent comply with ~~Section~~ Sections 1103.2 and 1103.6, they shall be relieved of further duty under this article with respect to those items of information. The transferor and his or her agent shall not be required to provide notice to the transferee if the information provided subsequently becomes inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence, unless the transferor or agent has actual knowledge that the information has become inaccurate.

(b) If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this article.

SEC. 5. Section 1103.6 is added to the Civil Code, to read:

1103.6. (a) *The environmental hazard disclosures required by this article are set forth in, and shall be made on a copy of, the following Environmental Hazard Disclosure Statement:*

ENVIRONMENTAL HAZARD DISCLOSURE STATEMENT

1 *This statement applies to the following property: _____*

2
3 *The transferor and his or her agent(s) or a third-party consultant disclose*
4 *the following information with the knowledge that even though this is not a*
5 *warranty, prospective transferees may rely on this information in deciding*
6 *whether and on what terms to purchase the subject property. Transferor*
7 *hereby authorizes any agent(s) representing any principal(s) in this action to*
8 *provide a copy of this statement to any person or entity in connection with*
9 *any actual or anticipated sale of the property.*

10 *The following are representations made by the transferor and his or her*
11 *agent(s) based on their knowledge and public record databases maintained*
12 *by the state and federal governments. This information is a disclosure and is*
13 *not intended to be part of any contract between the transferee and*
14 *transferor.*

15
16 *THIS REAL PROPERTY IS IN THE PROXIMITY OF THE FOLLOWING*
17 *ENVIRONMENTAL HAZARD SITE(S):*

18
19 *(1) A NATIONAL PRIORITY LIST SITE, as listed on the database of*
20 *the Environmental Protection Agency.*

21
22 *Yes ____ No ____ (Site ID and Location _____)*

23
24 *(2) A COMPREHENSIVE ENVIRONMENTAL RESPONSE,*
25 *COMPENSATION, AND LIABILITY ACT (CERCLA) SITE, as listed*
26 *on the database of the Environmental Protection Agency.*

27
28 *Yes ____ No ____ (Site ID and Location _____)*

29
30 *(3) A SPILLS, LEAKS, INVESTIGATIONS, AND CLEANUP SITE,*
31 *as listed on the database of the California Water Resources Control*
32 *Board.*

33
34 *Yes ____ No ____ (Site ID and Location _____)*

35
36 *IF THIS PROPERTY IS LOCATED WITHIN A ONE-QUARTER MILE*
37 *RADIUS OF AN ENVIRONMENTAL HAZARD SITE, OR WITHIN THE*
38 *SAME ZIP CODE OR CITY AS AN ENVIRONMENTAL HAZARD SITE AS*
39 *INDICATED IN THE PUBLIC DATA BASE OF THE DEPARTMENT OF*
40 *TOXIC SUBSTANCE CONTROL, YOU MAY WISH TO INVESTIGATE THE*

1 INFORMATION ABOUT THE SITE FURTHER BY CONTACTING THE
2 AGENCY RESPONSIBLE FOR THE MAINTENANCE AND CLEANUP OF
3 THIS SITE. THE DATABASES ON WHICH THESE DISCLOSURES ARE
4 BASED ARE ESTIMATES OF WHERE POTENTIAL CONTAMINATION
5 FROM THE HAZARD SITES MAY BE LOCATED. THEY ARE NOT
6 DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL
7 BE AFFECTED BY AN ENVIRONMENTAL HAZARD SITE.
8 TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN
9 PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER
10 HAZARDS THAT MAY AFFECT THE PROPERTY.

11
12 Signature of Transferor(s) _____ Date _____

13 Signature of Transferor(s) _____ Date _____

14
15 Agent(s) _____ Date _____

16 Agent(s) _____ Date _____

17
18 Check only one of the following:

19
20 ☐ Transferor(s) and their agent(s) represent that the information herein is
21 true and correct to the best of their knowledge as of the date signed by the
22 transferor(s) and agent(s).

23
24 ☐ Transferor(s) and their agent(s) acknowledge that they have exercised
25 good faith in the selection of a third-party report provider as required in
26 Civil Code Section 1103.7, and that the representations made in this
27 Environmental Hazard Disclosure Statement are based upon information
28 provided by the independent third-party disclosure provider as a substituted
29 disclosure pursuant to Civil Code Section 1103.4. Neither transferor(s) nor
30 their agent(s) (1) has independently verified the information contained in this
31 statement and report or (2) is personally aware of any errors or inaccuracies
32 in the information contained on the statement. This statement was prepared
33 by the provider below:

34
35 Third-Party

36 Disclosure Provider(s) _____ Date _____

37
38 Transferee represents that he or she has read and understands this document.
39 Pursuant to Civil Code Section 1103.8, the representations made in this

Natural Hazard Disclosure Statement do not constitute all of the transferor's or agent's disclosure obligations in this transaction.

Signature of Transferee(s)_____ Date_____
Signature of Transferee(s)_____ Date_____

(b) The disclosure required by this article is only a disclosure between the transferor, the transferor's agents, and the transferee, and shall not be used by any other party, including, but not limited to, insurance companies, lenders, or governmental agencies, for any purpose.

~~SECTION 1. Section 105.5 is added to the Water Code, to read:~~

~~105.5. It is the established water policy of the state to conserve water to the maximum extent feasible to ensure its continued availability and to protect natural resources.~~